

COMMENTS: DRAFT PAYROLL DEDUCTION RULE CHANGE (WAC 296-126-025)
1/14/2005 ELAC MEETING

Members comments are to be returned via e-mail within 30 days, or February 15, 2005

Abbreviation Key:

ER = employer EE = employee MW = minimum wage L&I = Dept of Labor & Industries

COMMENT MADE BY:	COMMENT SUMMARY
FINAL WAGE DEDUCTIONS	WAC 296-126-025
BUSINESS	Employer can deduct in certain circumstances below minimum wage; does not think L&I has interpreted wage deduction and minimum wage laws correctly; discussion on this same comment;
BUSINESS	Put draft copy into legislative-type format with strikeouts and changes so the changes can be compared with current regulation
BUSINESS	Why can't the final paycheck go below the minimum wage if the employee has committed dishonest or willful act or for cash shortages
BUSINESS	Are wage garnishments allowable – no specific reference in this WAC as a legal deduction during final wage or on-going employment
BUSINESS	Take out language about the portable cash depository as it has nothing to do with deductions
BUSINESS	How does an employer prove walkouts are caused by a dishonest or willful act
LABOR	Why is oral and written agreements in this WAC? L&I Response: It is language from RCW 49.48.010 and must be included in the WAC that way also.
AUDIENCE	Sent this WAC to 250 of his group and had 3 main comments returned: (1) Their #1 response was re loans and interest applied, why can't the employer charge interest if it is part of the written agreement; (2) there is no reference to tools and uniform deductions (3) what about deductions for stealing by employee from final pay– how does employer prove it

COMMENT MADE BY:	COMMENT SUMMARY
ON-GOING WAGE DEDUCTIONS	WAC 296-126-028
BUSINESS	Question as to whether an employee who is given vacation pay in advance and leaves before it is worked out, if amount can be deducted from final check; Resp – OK if there is a written agreement in advance and can go below minimum wage
BUSINESS	Re #4—states no other deductions allowed—what about deduction for overpayment in #4 of overpayment reg
BUSINESS	Doesn't agree that interest can't be charged
BUSINESS	What about court ordered garnishments – can they go below minimum wage? Resp—Dept's position is that it is OK to deduct if ordered by court or by OSE (Office of Support Enforcement – DSHS); Logue: this is not properly addressed in this WAC (for final or on-going payment of wages). L&I Resp: It can be referenced to RCW 6.27 wage garnishment law.
BUSINESS	Agrees Re interest charges should be allowed and they don't accrue to the employer's benefit
BUSINESS	Doesn't agree deduction can go below minimum wage for agreed deduction to employee's benefit; need legal analysis of minimum wage issue; Have 2 different categories; L&I doesn't have correct reading of RCW 49.46 and RCW 49.52.060
BUSINESS	What is statute authority for interest? ER is not going to profit for interest fee. Fee helps employer to pay for the process
BUSINESS	This doesn't address 401K plans or medical plans; Resp – this would be OK if written agreement in advance. Employer can't require employees to take pension or medical plans as a condition of employment
BUSINESS	Oral or written notice language should stay in

COMMENT MADE BY:	COMMENT SUMMARY
OVERPAYMENTS	WAC 296-126-030
LABOR	How far back can employer go for deduction; (2) how long to get plan in effect and get it corrected; (3) agree that oral or written notice is OK
LABOR	How does this law affect collective bargaining agreements when they have an agreement, i.e., overpayment deduction allowed within 90 days.
LABOR	Employer has certain responsibilities in record keeping
LABOR	Doesn't agree about allowing 120 window of correction; stick to 60-day limitation
LABOR	How does this law affect CBA's when they have an agreement, i.e., overpayment deduction allowed within 90 days.
BUSINESS	Tuition program – some employers make policy they will pay the tuition, but the employee must stay for 3 years or the tuition will be withheld from final paycheck or employee has to pay it back if they leave before the agreed timeframe
BUSINESS	What is inadvertent and infrequent
BUSINESS	Recommend 120 day allowance for window of correction
BUSINESS	Recommend language be “infrequent and/or inadvertent” (currently does not have the “and/or”
BUSINESS	What if employee is at minimum wage rate—employer is not allowed to withhold overpayment for employees paid at the minimum wage rate
BUSINESS	Why is overpayment different than a loan
BUSINESS	Agree re 120 day window of correction
BUSINESS	Payroll error that was inadvertent
BUSINESS	Where did 60-day window of correction originate? Doesn't agree with that—should be 120 days because that's when he reviews employee payroll when he does tax reports for various agencies
BUSINESS	The word “deduction” is in overpayments and on-going employment reg states no other deductions except for taxes, agreed to benefit of worker or med, surgical, hospital care. Requirements do not agree with each other
BUSINESS	If EE misrepresented he worked number of hours—doesn't give employer ability to deduct wages so employee gets away with theft – no resolution offered in this language
L & I	L&I wants to provide certainty on both sides for overpayments but a balance needs to be struck
AUDIENCE	Some employers tell employees they have to stay until they work off their debt